PEMUNGUT HASIL TANAH, KUANTAN v. ORIENTAL RUBBER & PALMOIL SDN. BHD.

[S.C. (Seah, Syed Agil Barakbah & Wan Hamzah S.C.JJ.) April 23 & August 28, 1985]

[Kuala Lumpur – Federal Court Civil Appeal No. 342 of 1984]

Land Acquisition – Delay in making award – Application for certiorari – Whether delay unreasonable – No proof of grave injustice – Order of certiorari set aside – Land Acquisition Act 1960, ss. 8 & 10.

Administrative Law – Certiorari – Delay in making award for land acquisition – No proof of grave injustice – Order for certiorari set aside.

In this case land belonging to the respondent was acquired by the Pahang State Authority. The notification under section 8 of the Land Acquisition Act, 1960, was published on August 16, 1979 but the award was made on March 25, 1983. The respondent applied for an order of certiorari to quash the decision and the award and this was granted in the High Court. The appellant appealed.

Held: (1) unreasonable long delay in holding an inquiry and in making an award can, in certain circumstances, cause grave or serious injustice to the landowner when land value and prices as well as costs are rising resulting in an award based on out-of-date prices or value which may not truly reflect adequate compensation. In others, such unexplained and unreasonable long delay may amount to an abuse of statutory power. In such cases the Court may in a proper case, declare that the public authority should be held to be disabled from going on with the compulsory acquisition of the land;

(2) in this case, in the absence of any reasonable explanation for the delay in holding the inquiry under section 10 of the Land Acquisition Act, 1960 the learned Judge was justified to come to a finding that a delay of three and a half years after the publication of the Gazette Notification pursuant to section 8 of the Act was unreasonable;

(3) before any judge could infer that unreasonable delay had seriously prejudiced or even resulted in serious injustice to the landowner whose land had been compulsorily acquired by the Authority, there must be admissible evidence to support it and there must also be satisfactory evidence that land value and/or prices had risen rapidly between the date of the publication of the declaration in the Gazette and the date of the inquiry;

(4) in this case since the respondent had failed to prove that he had suffered grave injustice as a result of the unreasonable delay the High Court should have dismissed the application for *certiorari*. The order of the learned Judge must therefore be set aside.

Cases referred to:

(1) *Pemungut Hasil Tanah, Pulau Pinang* v. *Ong Gaik Kee* [1983] 2 M.L.J. 35.

(2) *Tiverton & North Devon Ry Co.* v. *Loosemore* (1883-84) 9 App. Case. 480, 489.

(3) *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang* v. *Kam Gin Paik & Ors.* [1983] 2 M.L.J. 390.

(4) *West Midland Baptist (Trust) Association* v. *Birmingham Corporation* [1969] 3 W.L.R. 389.

SUPREME COURT.

Dato Wan Mohamed bin Wan Muda (State Legal Adviser, Pahang) for the appellant.

Ghazi bin Ishak for the respondents.

Cur. Adv. Vult.

Seah S.C.J. (delivering the Judgment of the Court) : This appeal is concerned with one question, namely, whether the learned judge was right to quash the award of Pemungut Hasil Tanah, Kuantan made on March 25, 1983 in connection with the compulsory acquisition by the State Authority of Pahang of 34 acres of lands in Lot 126 Mukim Ulu Kuantan and 15 acres of lands in Lot 3619 Mukim Kuala Kuantan.

The facts are not in dispute and may be stated briefly.

Oriental Rubber & Palmoil Sdn. Bhd. (hereinafter referred to as the respondent) are the registered owners of Lot 126 Mukim Ulu Kuantan and Lot 3619 Mukim Kuala Kuantan containing altogether an area of 770 acres made up of 87 acres and 682 acres respectively. Pursuant to section 8 of the Land Acquisition Act 1960 the State Authority of Pahang published a notification No. 486 in the Government Gazette on August 16, 1979 that approximately 34 acres of Lot 126 and 15 acres of Lot 3619 were needed for "Tapak Ranchangan Rumah Murah Panching/Sungai Charu". Inquiry for the hearing of claims for compensation of such lands was held on November 4, 1982 and it was completed on March 3, 1983. On March 25, 1983 the Pemungut Hasil Tanah, Kuantan (hereinafter referred to as the appellant) awarded to the respondent a total sum of $323,900.00 based on the market value of the land at the date of the Gazette publication, *viz.*, August 16, 1979.

Apparently the respondent were not satisfied with this award because after having obtained leave of the High Court on June 16, 1984 they took out an originating Motion for an order of *certiorari* to remove to the Court for the purpose of being quashed the decision and award of the Pemungut Hasil Tanah, Kuantan made on March 25, 1983.

In quashing the award of the appellant the learned judge seemed to have relied on the Federal Court case of *Pemungut Hasil Tanah, Pulau Pinang*

v. *Ong Gaik Kee.*[1] We think it is necessary to consider and examine the facts of that case.

It appears that on April 25, 1974 the Penang State Authority made a declaration under section 8 of the Land Acquisition Act 1960 *vide* Gazette Notification No. 103 that the whole of Lot 532 in Mukim 12, West District of Penang and six other parcels were needed for "public, industrial, residential, commercial and agricultural purposes to wit for land development and utilisation, resettlement of squatters, housing, institutional and recreational amenities in relation to integrated urban development and matters connected therewith".

Some seven years later, an inquiry was held pursuant to section 10 and an award of $1,117,418.50 was made on July 7, 1981 based on 60 cents per square foot.

Before this inquiry the State Authority published another notification No. 884 in the Gazette on December 20, 1979 declaring that an area of 9,369 sq. ft. together with some other lands in Gazette Notification No. 103 were needed for another public purpose, *viz.*, Penang Island Traffic Dispersal – Package II. The inquiry was held four months later on April 24, 1980 and an award of $28,109.27 was given in respect of 9,369 sq. ft. calculated at $3.00 per sq. ft.

At the Pulau Pinang High Court the award of $1,117,418.50 was quashed by the learned Judicial Commissioner and this was upheld by the Federal Court. The judgment in *Ong Gaik Kee case* was delivered by Salleh Abas C.J. (Malaya) (as he then was) and this landmark decision appears to establish the following propositions of law:

Unreasonable long delay in holding an inquiry and in making an award can, in certain circumstances, cause grave or serious injustice to the landowner when land value and prices as well as costs are rising rapidly resulting in an award based on out-of-date prices or value which may not truly reflect adequate compensation. In others, such unexplained and unreasonable long delay may amount to an abuse of statutory power. In such cases, the court may, in a proper case, declare that the public authority should be held to be disabled from going on with the compulsory acquisition of the land (see Lord Cairns in *Tiverton & North Devon Ry Co.* v. *Loosemore*[2]).

That case was followed by the Federal Court sitting in Ipoh in *Pemungut Hasil Tanah Daerah Barat Daya, Pulau Pinang* v. *Kam Gin Paik & Ors.*[3] In our opinion, support for these propositions may be found in *West Midland Baptist (Trust) Association* v. *Birmingham Corporation,*[4] a decision of the House of Lords. In that case the decision to acquire the subject land was confirmed on June 26, 1947 and the possession was entered on or about June 24, 1963. By pegging the market value to the date of the decision it was held in that case that Parliament must have intended the inquiry and award to be made within a reasonable time. Any unreasonable long delay may result in assessment based on out-of-date land value and/or prices and the word "compensation" would be a mockery if what was paid was something that did not compensate. In such a case, the award made after a lapse of 15 years would be manifestly inadequate when there was evidence that land value and prices as well as costs were escalating rapidly.

It was argued in that case that it was open to the landowner to take steps to request for assessment of the subject land soon after the decision to acquire was made but in the opinion of Lord Morris of Borth-y-Gest at page 407:

> "That is perfectly true. But he is not obliged to follow that course. An owner who is unwilling to part with his property might find that an acquiring authority had abandoned the scheme upon which their rights of acquisition were based and had lost their rights [see *Grice* v. *Dudley Corporation* [1958] Ch. 329]."

We would adopt the observations expressed by Lord Morris of Borth-y-Gest in that case.

It was conceded that the provision of section 38 of the Interpretation and General Clauses Ordinance 1948 applied to the facts of this case. The learned State Legal Adviser, who represented the appellant in this appeal, had submitted that an inquiry held in pursuance of section 10 of the Land Acquisition Act 1960 about three and half years after the notification in the Gazette, could not amount to unreasonable long delay, and that the learned judge was wrong to come to this finding. For the respondent, it was argued that the learned judge was entitled to come to such a conclusion in the absence of any explanation from the appellant for this long delay, and since the learned State Legal Adviser had failed to show that the learned judge had taken extraneous and/or irrelevant matters into consideration in coming to this finding, the appellate court should decline to disturb or interfere with his decision.

In our opinion, the question whether or not

the long delay was unreasonable is a question of mixed law and fact to be determined by the court of first instance after hearing the evidence adduced before it and considering any explanation which the Pemungut Hasil Tanah may give. In the absence of any reasonable explanation for the delay in holding an inquiry under section 10 of the Land Acquisition Act 1960 (and there was no attempt by the appellant in the court below to do so) we think that the learned judge was justified to come to a finding that a delay of three and half years after the publication of the Gazette Notification pursuant to section 8 of the Act was unreasonable. In our judgment, the test to be applied in such a case is a subjective one depending upon the peculiar facts of each particular case and local conditions. This is so in times of volatile fluctuations of interest rates, escalating property prices and constant risks of future inflation. We are inclined to agree with the contention of learned counsel for the respondent that the conclusion of the learned judged that there was unreasonable delay should not be disturbed unless it is shown that he had erred in law.

Next, it was contended by the learned State Legal Adviser that there was no cogent evidence to support the finding of the learned judge that an injustice had been caused to the respondent inasmuch as the award made by the appellant on March 25, 1983 was based on the market value of the land on August 16, 1979. It was further submitted that in so holding the learned judge seemed to have ignored the principles relating to the determination of compensation contained in the First Schedule of the Land Acquisition Act 1960 and the relevant part reads:

"For the purposes of this Act the term 'market value' where applied to any scheduled land shall mean the market value of such land – in other cases at the date of the publication in the Gazette of the declaration under section 8 [see Rule 1(1)(b)]."

It was then argued that in making the award in that manner the appellant was merely carrying out his duty laid down by law and the learned judge was wrong to infer that a grave injustice had been suffered by the respondent. In our judgment, before any judge could infer that unreasonable delay had seriously prejudiced or even resulted in serious injustice to the landowner whose land had been compulsorily acquired by the Authority, there must be admissible evidence to support it and there must also be satisfactory evidence that land value and/or prices had risen rapidly between the date of the publication of the declaration in the Gazette and the date of the inquiry. In *Ong Gaik Kee case (supra)* the increase was from 60 cents per square foot to $3.00 per square foot between April 25, 1974 to December 20, 1979, a space of five years and eight months approximately, according to the assessment made by the Pemungut Hasil Tanah, Pinang and there was no dispute as to the two valuations. This represents a very substantial increase of 400%. Based on this clear evidence both the High Court and the Federal Court were compelled to come to the conclusion that the landowner in that case had indeed suffered a grave injustice by the unreasonable long delay in holding the inquiry and in making the award. Here, the respondent tendered a valuation report indicating that the market value of the subject land known as Lot 126 Mukim Ulu Kuantan and Lot 3619 Mukim Kuala Kuantan at the date of the publication of the declaration in the Gazette on August 16, 1979 to be in the region of $14,000.00 an acre and that at the time of the inquiry on November 4, 1982, some 3 years and 2 months later, the estimated value of the lands had been increased to about $17,560.00 per acre. If the valuation report were correct this would appear to represent an increase of 25% only. In our opinion, such an increase cannot justify a finding that the landowner had suffered a grave injustice. For these reasons, we are compelled to disagree with the finding of the learned judge based on the meagre evidence adduced by the respondent in the court below.

We do not find it necessary to deal with the other question whether or not the unreasonable long delay in conducting an inquiry and in making an award could be construed as an abuse of statutory power by the appellant in the context of this case since we did not hear any argument on it. Neither was it dealt with by the learned judged nor did the respondent appear to rely on it in the court below. We would prefer to keep this question open until it arises in a case where the answer would be decisive.

Since the respondent had failed to prove that he had suffered grave injustice as a result of the unreasonable long delay in holding the inquiry and in making the award, the proper order of the High Court should be to dismiss the Originating Motion. We therefore allow the appeal and set aside the order of the learned judge quashing the inquiry and award of the Pemungut Hasil Tanah, Kuantan dated March 25, 1983. We would also award costs to the appellant here and below to be taxed.

Before we part from this appeal we note that the respondent has filed an application to refer the award to the High Court for its determination. The fact that this appeal has been allowed shall not prejudice the right of the respondent to proceed with the application in accordance with the provisions of the Land Acquisition Act 1960.

Appeal allowed.

Solicitors : *Presgrave & Matthews.*

SOONG AH CHOW & ANOR. v. LAI KOK CHENG

[F.C. (Salleh Abas L.P., Hashim Yeop A. Sani & Syed Agil Barakbah F.JJ.) January 10 & February 11, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 211 of 1983]

Landlord and Tenant – Determination of lease by effluxion of time – Decontrol certificate obtained – Landlord refusing to accept rent – No tenancy existing – Tenant a trespasser – Double rent – Control of Rent Act, 1966, ss. 4–11, 16, 23(1)(a) & 23(2) – Civil Law Act, 1956, s. 28(4)(a).

In this case, by a lease executed on October 3, 1961 between the respondent and the appellants a tenancy was created for a term of 18 years from August 1, 1961 at a yearly rental of $1,800/- payable at a rate of $150 per month. The said lease expired by effluxion of time on July 31, 1979. As from August 1, 1979 all tenders of rental by the appellants were consistently refused by the respondent and the appellants were asked to vacate the premises. On November 3, 1981 the landlord obtained a Certificate of Decontrol under section 23(1) (a) of the Control of Rent Act 1966 and served copies of the certificate to the appellants. On November 26, 1981 the landlord also served a notice to quit on the appellants. In an action brought by the respondent against the appellants the trial judge directed the appellants to render vacant possession of the premises and to pay double rent from August 1, 1979, that is, the date that the trial judge held the appellants to be trespassers. The appellants appealed.

Held: (1) because of the refusal of the landlord to accept any rental from August 1, 1979 no tenancy was created between the parties as from that date. There was therefore no tenancy existing between the appellants and the respondent after July 31, 1979 in respect of the premises; and there is no protection afforded by the Control of Rent Act, 1966 to the appellants after July 31, 1979;

(2) since the trial judge had found the appellants to be trespassers from August 1, 1979 the order to impose double rental from that date was correctly made.

Cases referred to:

(1) *Crook* v. *Whitbread* (1919) 88 L.J. K.B. 959.

(2) *United India Fire & General Insurance Co. Ltd.* v. *Jaffnese Co-operative Society Ltd.* [1971] 1 M.L.J. 118.

(3) *Low Kum Yoon* v. *Teh Kim Huah* [1979] 1 M.L.J. 83

(4) *Krishna Sreedhara Panicka* v. *Chiam Soh Yong Realty Co. Ltd.* [1983] 1 M.L.J. 65.

FEDERAL COURT.

James Ponniah for the appellants.
Atma Singh Gill for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani F.J. (delivering the Judgment of the Court) : The appeal was originally on many grounds against the order of the trial Judge directing the appellants to render vacant possession of premises No. 11, Singapore Street, Seremban and also against the further order that the appellants to pay double rents from August 1, 1979, *i.e.*, the date that the trial Judge held the appellants to be trespassers. At the commencement of the hearing of the appeal, however, counsel for appellant, Mr. James Ponniah, abandoned ground 1-4 inclusive in the memorandum of appeal which had put into issue not only the purported protection conferred on the appellants by the Control of Rent Act 1966 after the expiry of the lease by effluxion of time but also the legality of the Decontrol Certificate issued under section 23 of the 1966 Act. The remaining grounds of appeal have thus been considerably simplified and the issues accordingly reduced to two questions of law, namely, whether the trial Judge was correct in holding that the appellants were trespassers from August 1, 1979 onwards and secondly whether the trial Judge was correct in ordering the payment of double rent from that date.

The bare facts relevant for our present purpose may be summarised as follows. By a lease executed on October 3, 1961 between the landlord of the premises (respondent now) and the appellants, a tenancy was created for a term of 18 years from August 1, 1961 at a yearly rental of $1,800/ payable at a rate of $150/- *per mensem.* The said lease expired by effluxion of time on July 31, 1979. As from August 1, 1979 all tenders of rental by the appellants were consistently refused by the respondent and the appellants were asked to vacate the premises. On November 3, 1981 the landlord obtained a Certificate of Decontrol under section 23(1) (a) of the Control of Rent Act, 1966 and served copies of the Certificate to the appellants on November 24, 1981 and November 26, 1981.